

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA07-1017

March 12, 2008

NATIONAL HOME CENTERS and
AIG CLAIM SERVICES, INC.
APPELLANTS

V.

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F605695]

TAMMY SADLER

APPELLEE

AFFIRMED

In this workers' compensation case, the administrative law judge determined that appellee, Tammy Sadler, suffered a compensable injury to her right knee on or about March 22, 2006, for which she was entitled to benefits from appellants, National Home Centers, Inc. (National), and AIG Claim Services, Inc., and that Sadler was entitled to temporary-total disability benefits from June 19, 2006, to a date yet to be determined. The Commission affirmed the ALJ decision with regard to compensability of the injury and determined that Sadler was entitled to temporary-total disability benefits from June 19, 2006, to November 13, 2006, based upon testimony that Sadler began a new job on that date. Appellants now appeal to this court, arguing that substantial evidence does not exist

to support the Commission's decision that Sadler sustained a compensable injury. We affirm.

Standard of Review

In *Cedar Chemical Company v. Knight*, ___ Ark. ___, ___, ___ S.W.3d ___, ___ (Jan. 31, 2008) (citations omitted), our supreme court reiterated the appellate courts' standard of review in workers' compensation cases:

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. Substantial evidence exists if reasonable minds could reach the Commission's conclusion. The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision.

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony.

Hearing Testimony

At the hearing, Sadler testified that she had worked for National since August 2003, delivering and installing refrigerators and other appliances. She said that on March 8, 2006, while taking down racks on the sales floor and putting them on carts to be taken to the warehouse, she hit her right knee on one of the cart posts, and that her knee became swollen and bruised. She stated that she reported the injury to her supervisor, Bobby

Smith; that he had her complete some forms, but did not offer to send her to a doctor; and that she continued to work for the rest of the day. Sadler stated that although she missed some afternoons from work as a result of this injury, she continued to work without restrictions. She said that she continued to have pain after this incident, which she told her supervisor and her co-workers about, and although the swelling in her knee diminished, the pain never completely went away.

Sadler further testified that on March 21 or 22, she made a refrigerator delivery with Harry Orr and that when she squatted down to change the door hinges, her right knee “popped really loud” and she began to experience worse pain. Sadler thought that she left work early that day because her leg was hurting, and that she told Smith about her leg because he was the person who had the authority to allow her to leave early. Sadler testified that on March 23, she notified Smith that her condition had worsened and that he told her to see his supervisor, Mark Sunderland, who in turn told her to see Janis Hurst. Sadler told Sunderland and Hurst that she had not been to a doctor as a result of the initial incident, showed them how swollen her knee was, and explained the refrigerator incident. Sadler said that no one gave her any additional paperwork to complete at that time, but that National sent her to the doctor. Sadler testified that she thought this was a continuation of her “same injury.”

Sadler was seen by Dr. Cynthia Almond at Concentra and was prescribed physical therapy. She was referred to Dr. Tad Pruitt at Ortho Arkansas, who restricted her work

duties, and she was also seen by Dr. Charles Pearce for a second opinion at National's request. Sadler testified that she told the doctors about both of her incidents.

Sadler explained that her leg continued to hurt "really bad," and that she told her supervisory personnel and her co-workers about the pain often. She denied having knee problems prior to the incidents in question. She said that the two medical specialists had both recommended surgery.

Sadler recounted that she worked for National until June 19, 2006, at which time National told her that because her injury was non-compensable, she could not remain on light duty and that she had to go home. She stated that she drew unemployment because she had to have money, but that she was no longer doing so because she began a new job November 13, 2006.

Upon the ALJ's examination, Sadler said that a couple of days before she hit her knee on the cart post, she had bumped that knee on a box that was sitting on a pallet in the warehouse. However, Sadler said that incident was not significant, that there was no swelling, and that it just "smarted a bit."

James Wing, Mark Sunderland, and Bobby Smith, who were all in managerial positions at National, each testified that Sadler told them about the initial incident, but all denied that Sadler ever initially told them about the second incident, where she was delivering the refrigerator and her knee popped. All three men denied knowledge of Sadler delivering a refrigerator. Wing and Sunderland said that Sadler told them about the incident when she was confronted after the results of an April 2006 MRI revealed a

meniscal tear, which was believed to be inconsistent with the report of Sadler's initial incident. Wing and Sunderland also testified that Sadler was offered medical treatment for her initial incident, which she declined.

Medical Evidence

On March 23, 2006, Sadler was seen at Concentra Health Centers by Dr. Cynthia Almond. The medical history indicated that Sadler bumped her right knee on March 6 and had bumped it three days in a row. Dr. Almond noted that there was swelling in the knee and that it hurt with squatting and kneeling, and she diagnosed contusion of the knee, ordered physical therapy, and placed Sadler on restricted duty. On April 3, 2006, noting that Sadler did not report any improvement with conservative treatment, Dr. Almond ordered an MRI, which revealed that the right knee had a nondisplaced oblique flap tear of the posterior one-half of the medial meniscus. Dr. Almond then referred Sadler to Ortho Arkansas for further evaluation and treatment.

Sadler was seen at Ortho Arkansas by Dr. Tad Pruitt on April 12, 2006. The medical notes indicated that Sadler reported two incidents to him, the striking of her right knee on the metal cart post and then several days later, the popping incident during the refrigerator delivery, which resulted in pain and swelling in her knee. Dr. Pruitt noted that since the injuries, Sadler had popping, pain, and catching along the medial side of the right knee, and that the MRI indicated a medial meniscal tear, along with some arthritic changes in her knee. He recommended right-knee arthroscopy and placed Sadler on light duty at this time.

Sadler was later seen by Dr. Charles Pearce of Arkansas Specialty Orthopaedics on May 16, 2006 for her right-knee pain. Sadler's history again indicated the two separate incidents. Dr. Pearce noted that the MRI indicated a definite medial meniscal tear, and it was his opinion that the second injury, the squatting and standing with an associated popping, could be related to the tearing of the meniscus and would be "consistent with a mechanism for that type of problem."

Dr. Pruitt sent a letter to Sadler's counsel on October 16, 2006, indicating that Sadler had reported two separate injuries to him, and stating that the second incident, the squatting incident, was "a classic description of a meniscal tear producing an injury that did occur at work. Therefore, in my opinion, within a reasonable degree of medical certainty, [Sadler's] work related injury is the major cause of her meniscal tear, greater than 50% of the cause."

Commission Opinion

In its opinion, the Commission affirmed the compensability of Sadler's injury, and determined that Sadler was entitled to temporary-total disability benefits from June 19, 2006, to November 13, 2006, due to Sadler's testimony that she began a new job on that date. In affirming the compensability of Sadler's right-knee injury, the Commission noted that Sadler first bumped her knee at work on March 8, 2006, and that she completed a Form AR-N on that same date; and that Sadler testified that she also suffered another work-related incident on March 22, when her knee popped after she had been squatting down, for which she did not complete another Form AR-N, but that National sent her

for medical treatment on March 23. The Commission found that although Sadler only told Dr. Almond about the bump on March 6 but not the pop from March 22, Dr. Almond had noted Sadler had knee pain while squatting and kneeling, and that she had noted swelling around the knee, as well as a meniscal tear as a result of the MRI. The Commission found that the history given to Dr. Pruitt, which included two workplace accidents, corroborated Sadler's testimony, and it specifically found that Dr. Pruitt's opinion that Sadler had sustained a work-related meniscal tear was credible.

Argument and Analysis

Appellants argue that there is not substantial evidence to support the Commission's finding that Sadler sustained a compensable injury. In support of this argument, they contend that there was not a work-related event that resulted in a compensable injury; rather, there was only a bumping incident reported on March 8, 2006, which did not cause Sadler's current problem. Appellants argue that the evidence does not demonstrate the occurrence of an alleged injury on March 22, 2006; that there are no objective findings in the record because the MRI was not made a part of the record; that Sadler failed to establish a specific injury; and that Sadler never reported a popping incident to any of her supervisors.

A compensable injury is defined, in pertinent part, as

An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services. . . . An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2007). A compensable injury must be “established by medical evidence supported by objective findings,” Ark. Code Ann. § 11-9-102(4)(D), which are defined as “those findings which cannot come under the voluntary control of the patient.” Ark. Code Ann. § 11-9-102(16).

In this case, Sadler specifically testified that the second incident occurred on March 21 or 22, and she said that she told her supervisors about the second incident at the time it occurred, although all of them denied that she told them about the incident until they later questioned the MRI results. However, it is the Commission’s province, not this court’s, to determine issues of credibility when the evidence is contradictory. *Cedar Chemical, supra*. The MRI, while not entered into evidence at the hearing, was discussed in numerous medical notes, and it clearly indicated a medial-meniscal tear in Sadler’s right knee. In his April 12, 2006 record, Dr. Pruitt noted both of Sadler’s work incidents. Furthermore, the Commission deemed Dr. Pruitt’s testimony credible that Sadler had sustained a work-related medial meniscal tear in her right knee. We hold that this evidence is sufficient to support the Commission’s finding that Sadler sustained a compensable injury for which appellants are liable, and we affirm this determination.

Appellants alternatively contend that in the event that this court finds that Sadler suffered a compensable injury, they are entitled to a credit under Arkansas Code Annotated section 11-9-506 for the unemployment benefits Sadler received during her healing period after she was terminated from National. However, the Commission, in its opinion, made the following determination, “Temporary total disability is payable to

[Sadler] to the extent her temporary total disability compensation exceeds unemployment benefits [she] received. Ark. Code Ann. § 11-9-506.” Accordingly, appellants have already been awarded this credit by the Commission.

Affirmed.

GLADWIN and VAUGHT, JJ., agree.